Stewart, James, d. 1752, defendant

An AUTHENTICK COPY of the

DYING SPEECH

OF

JAMES STEWART, Tacksman of *Acharn* in *Appin*, tried in a Justiciary-Court at *Inverary* the 21st *September*, 1752, for the alledged Crime of being Art and Part in the Murder of *Colin Campbell* of *Glenure*, (Factor upon the Estate of *Ardsheall* attainted) who was shot in the Wood of *Lettermore* upon the 14th of *May* last.

JUDGES, { ARCHIBALD DUKE of ARGYLL, Justice-General. / LORD ELCHIES, / LORD KILKERRAN, } Lords Commissioners.

My dear Countrymen,

THE several Motives that induce me to offer the World a Narrative of my uncommon Misfortunes, are as follows:

First of all, My Innocence makes my Sufferings easy, and alleviates all Afflictions, be they never so severe in the Eyes of Man.

Secondly, That my Silence upon this Occasion might not be constructed to my Prejudice by my Prosecutors, as my Silence at the Bar, when I was hearing some of the Evidences aver Untruths against me, was said to have proceeded from Conviction of Guilt, and that if I should challenge them, they would say more than they did.

Thirdly, In order to let the World know the Hardships put upon me since my Connement, contrary to the known Laws of this Nation, which effectually disabled me from making many Defences I otherways might produce.

Fourthly, That it came to my Ears my Prosecutors had spread a false Report, that I made a Confession of that Crime when in *Inverary* Goal, after receiving my hard Sentence.

Fifthly, That I might offer my publick Advice to my Friends and Relations upon this melancholy Occasion.

These are the chief Reasons for the following Narrations of Facts, which I hope to make appear so clear as will convince the unprejudiced Part of Mankind how much I am injured, and that I die, as I endeavoured to live, an honest Man.

As to the first Article, of my being Art and Part, accessory to *Glenure*'s Murder, I positively deny, directly or indirectly, nor do I know who was the Actor, further than my Suspicion of *Allan-Breck Stewart*, founded upon Circumstances that have cast up since the Murder happened; and I do declare that it was not from any Conviction of his being guilty of that Crime I sent him Money to carry him off the Country, but out of Charity and Friendship I had for him, not only as a Relation, but likeways as a Pupil left to my Charge by his Father, and as a Person who kept close by my Brother in his greatest Distress, when lurking, before he got off the Country, and that I knew he was a Deserter, so durst not stand a Precognition. I also declare, it was without my Knowledge he carried any Part of my Clothes with him, from my House, upon the *Tuesday* before the Murder; nor did I know where he was, or where he had gone to from that Time, until *Donald Stewart*, Nephew to *Ballachelish*, came to me *Friday* after that unlucky Action happened, and told *Allan Breck* was at *Kelisnacone*, and begged I might send him some Money to help him off the Country, as he durst not appear publickly, for Fear of being secured for the above Reason of his being a Deserter; and the said *Donald Stewart* told me, that *Allan-Breck* assured him he had no Hand in the Murder.

I likeways declare, tho' it is set forth in my Indictment that *Allan-Breck* frequented my House and Company most of any Place since he came to the Country in *March* last, that I did not see him but thrice from his coming till he went away from the Country. The first Time was, two Nights before I went to *Edinburgh* in the Beginning of *April* last. The next or second

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cond Time was about eight Days after my Return from *Edinburgh*, which was about the laſt Days of *April*, as I beſt remember, when he ſtaid but one Night that I was at Home. The third and laſt Time was upon the *Monday* before *Glenure*'s Murder, that he came to my Houſe about One of the Clock Afternoon, and ſtaid that Night, and the next Morning I went from Home, which was *Tueſday*, before he was out of Bed [a]; nor did I ſee him that Day, or ſince; nor can I remember *Glenure*'s Name was ſpoke of in his Company either of the two laſt Times, unleſs it was he that told me *Glenure* was gone for *Lochaber* upon the *Monday*, as to which I cannot be poſitive, but I am very ſure there was no Word of deſtroying him in any Way ſpoke of. The firſt Time he muſt have heard me talk of *Glenure*, as I told him, was going to give in a Memorial for the Tenants to the Barons of Exchequer.

[a] It appears from the Trial that there was no private Converſation.

It is alſo ſet forth in my Indictment, that it was of my own Accord, and not at the Deſire of the Tenants, I went to make Application for them in Law: I do declare it was their Deſire that all lawful Ways ſhould be taken to keep them in Poſſeſſion, and do aſſure myſelf that nothing obliged them to refuſe that but Fear and Ignorance, believing that if they ſhould own it, they would be made Priſoners, as all the poor People were put in ſuch a Terror by a military Force kept in different Parts of the Country, that they, I mean the poor Country People, would ſay whatever they thought pleaſed my Proſecutors beſt [b].

[b] The Tenants acknowledged that they adviſed with the Pannel anent the Removing.

I declare, what *John Dow Breck M'Coll*, Bowman in *Keliſnacone*, deponed in regard to my coming to *Glenure*'s Window, was falſe, and that at the Time he condeſcended on I ſhould have ſaid ſo, being two Years ago, I was in very good Friendſhip with *Glenure*, which his Letters to me about that Time teſtify [c].

[c] The Letters referred to are produced in the Trial.

As to the Story *John More M'Coll*, *Dougal M'Coll*, and *John Beg M'Coll*, my Servants, told they heard me ſay in my Brew-houſe, that if *Glenure* did live five Years, he would be Laird of *Appin*, and that I ſaw People in *Appin* that would not allow *Glenure* to go on at ſuch a rate; this I do not remember: But this I can ſafely ſay, that *John Beg M'Coll* came in to the Goal at *Inverary* to ſee me, next Day after my Sentence was paſt, crying and tearing, as if he was half mad, and told me, that the Night *Dougal M'Coll* and he himſelf were on their Way to *Inverary*, at the Strath of *Appin*, *Euen Roy M'Coll*, Portioner of *Glaſsdrim*, and the ſaid *John More M'Coll*, brought two Bottles of *Aquavitæ* into the Barn where they were confined, and wrought upon them to make up that Story, and made them believe that it could not hurt me, and would gain them Friendſhip at *Barcaldine*'s Hand. I truly believe, tho' it were Truth, that it could not hurt any other Perſon, tho' any thing was Proof enough againſt a Man ſo ill looked upon as I ſeemed to be.

Alexander Stewart, Packman, deponed ſeveral Falſhoods, particularly in regard of the five Guineas he ſaid I deſired him to tell *William Stewart* Merchant in *Maryburgh*, to give *John Dow Breck* Credit in, for *Allan Breck* his Uſe, and his ſaying I deſired him to get only four Pounds *Sterling* from *William Stewart*, for paying Milk Cows bought for his Uſe at *Ardſheall*; whereas he was only deſired to get eight Pounds *Sterling* for paying theſe Cows, as they in Truth were bought for *William Stewart*'s Uſe.

I declare the Reaſon why I did not challenge them at the Bar was, that my Lawyers deſired me, tho' I heard a Witneſs ſwear falſly, not to ſpeak [d], otherways I ſhould be worſe looked upon; ſo that I hope the Unbiaſſed will believe that my Silence did not proceed from Fear, as alledged by my Enemies, but in Obedience to the Advice given me by my Council, which I was determined to follow, whatever ſhould happen.

[d] The Pannel was adviſed to cauſe his Lawyers put the Queſtions, and not to do it himſelf.

That there were Plenty of Bribes or Rewards offered to ſeverals, I am well aſſured; particularly *Donald Ranken*, Herd to *Ballacheliſh*, a young Boy, was offered Eighteen hundred Merks, which are his own Words: But he was kept cloſe Priſoner at *Inverary*, ſo that none of my Friends had Acceſs to put any Queſtions to him. *John M'Chombich*, late Miller in the Mill of *Ardſheall*, was offered his former Poſſeſſion of the Mill, for telling any thing would anſwer their Turn. *Duncan M'Chombich* and *Duncan M'Coll*, both in *Lagnaha*, were offered as much Meal as they pleaſed to call for at *Fort-William*, if they would make any Diſcoveries. I now leave the World to judge what Chance a Man had for his Life, when ſuch Bribes were offered to poor ignorant Country People? Or what Aſſurance can any Man have but ſuch Bribes prevailed with ſome of thoſe who did make Oath?

As to the uncommon Hardſhips put upon me under my Confinement, they were many; ſuch as, being taken into Cuſtody without any written Warrant, upon the ſixteenth Day of *May* laſt; carried, thro' Night to *Fort-William*, where I was kept cloſe Priſoner, not allowed to ſee any of my Friends, or any that could give me Counſel, until, about the Twentieth of *June*, there came a Letter from Mr. *William Wilſon*, directed to my Wife, with the Act of Parliament diſcharging cloſe Impriſonment longer than eight Days, which, when ſhown to Colonel *Crawfurd*, who then commanded the Fort and Troops, he allowed my Wife and ſome others to ſee me, but would not allow ſuch as I thought could be of moſt Uſe to me to come near me, particularly Mr. *Stewart* younger of *Ballacheliſh*, who came with ſome Law Advices to me, would not be admitted; nor would *Charles Stewart* Writer, or *William Stewart* Merchant in *Maryburgh*, get any Admittance. In ſhort, any who could be ſuppoſed to be of any Service to me, in making my Defences, were not permitted Acceſs to me. I do not impute this Uſage to Colonel *Crawford*, for whom I retain a very great Regard, and who did not want Humanity, had

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had he not got a very bad Impreſſion of me from my prejudiced Proſecutors. And when Colonel *Crawfurd* left *Fort-William*, ſometime in the Beginning of *July*, the new Governor would allow none to come near me, turned my Wife twice from the Fort, and diſcharged her to ſtay in *Maryburgh*; and in that cloſe Situation was kept, until my Indictment came to Hand about the latter End of *Auguſt*, ſo had no Way to make up my Defences, nor durſt any of my Friends in the Country offer to do for me, otherways would be laid up Priſoners; and thoſe who I expected had moſt to ſay for my Exculpation, were taken Priſoners, and kept cloſe till my Trial, ſo had not Acceſs to put any Queſtions to them [a], by which they were not ready to make their Anſwers when called at the Bar. I am far from charging the Governor with this hard Uſage, who appears to be a good-natur'd Man, but had his Orders ſo to uſe me.

[a] An Application to give Admittance to the Pannel's Sons and Servants was refuſed.

When my Trial came on, I found it was not only *Glenure*'s Murder I had to anſwer for, of which I thank God my Conſcience could eaſily clear me, but the Sins and Follies of my Forefathers were charged againſt me, ſuch as the Rebellion in 1715, in 1719, and 1745, ſo could not be allowed the Character of an honeſt Man, notwithſtanding that I firmly believe there was none preſent but who was either himſelf, or came of People that were concerned in Rebellion ſometime or other. God forbid they ſhould be all called Villains upon that Account, as the greateſt Sinner, upon his repenting, may turn Saint.

I was a School-boy in the Year 1715, and was but little more in the Year 1719; and if I had the Misfortune to be concerned in the Year 1745, I was indemnified, and have done nothing ſince to incur the Government's Diſpleaſure, that I am conſcious of.

Another ſurpriſing Charge againſt a Man in a Chriſtian Country came in againſt me, which was, that I was a common Parent to fatherleſs Children, and took Care of Widows in the Country, which gained me great Influence over the People, by which they were much led by me, or ſome Words to that Purpoſe. I hope ſoon to appear before a Judge who will reward Charity and Benevolence in a different Way: And I only regret how little Service was in my Power to do, not only to the Fatherleſs and Widows, but to all Mankind in general, as I (thank God) would make all the Race of *Adam* happy, if I could.

Another Charge, and a heavy one, was, that when Sub-factor to *Glenure*, that I exacted more Rents of the Tenants than was paid to the Exchequer, and which ſuperplus Rents I wrongouſly applied, either to my own Uſe, or to the Behoof of my Brother *Ardſheall*'s Children.

I own, I did get ſome Acknowledgments from ſome of the Tenants, with the Knowledge and Conſent of the Factor *Glenure*; and do declare, that I was as aſſiduous as in my Power, in acting for the Benefit of ſaid Children, and that I did account to their Behoof for all I could make of theſe Lands, over and above the Rent paid to the Factor, and thought it no Crime ſo to do; but to the contrary, thought it my Duty, to which I was bound by the Ties not only of Nature, but alſo Gratitude, being the diſtreſſed Offspring of a very affectionate loving Brother, to whom I was under many Obligations, and whoſe Misfortunes (I am well aſſured) proceeded from a Conviction of his doing his Duty, which may be conſtrued by ſome to be owing to the Prejudice of his Education.

I do declare, that I made no Confeſſion of the Crime alledged againſt me, at *Inverary*, or eleſewhere, and that I had it not to make, nor can I remember, that any there asked me the Queſtion, excepting Mr. *Alexander Campbell* Miniſter, who, I am perſuaded, could not be capable of being Author of that falſe Calumny, which muſt have been raiſed by ſome malicious Perſons, may God forgive them: It is very true, that I had told Mr. *Campbell*, I had no perſonal Love for *Glenure*, and that I was ſorry how few in his Neighbourhood had; but I hope, no Man would conſtruct that, as if I had an Intention to murder him.

I alſo told him, that I had the Charity to believe, that the Bulk of the Jury thought I had ſome Fore-knowledge of the Murder; yet I ſtill think, and not without ſome Reaſon, that they gave themſelves too little Time to conſider the Proofs of either Side, but gave in their Verdict upon the pre-poſſeſſed Notion of Guilt. What muſt convince all well-thinking People of their being ſo pre-poſſeſſed, is their ſtopping one of my Lawyers twice in his Speech to them, after the Witneſſes were examined. Mr. *Campbell* of *Southhall*, if I noticed right, was the firſt that interrupted my Lawyer. There was ſome other who alſo ſpoke, and who I did not know [b]. I am told, this is not often practiſed in Chriſtian Countries, but there are many Ways taken upon ſome Emergencies for anſwering a Turn; and it appears, I muſt have been made a Sacrifice, whoever was Guilty.

[b] Two of the Jury did ſpeak, when the Pannel's Lawyer was ſumming up the Proof, which diſconcerted him.

As to what *Alexander Campbell* in *Taynaluib*, deponed, That I did not know, what I ſhould help any of his Name to, if it was not to the Gallows: I do remember Part of what paſt, though my Memory is not quite ſo good as Mr. *Campbell*'s, or *Colin Maclaren*'s: But this far I can ſafely ſay, upon the Word of a Chriſtian going into Eternity, that I had no other Intention, in what I ſaid, than a Joke; and if I had any Grudge at himſelf for being *Campbell*, I was under no Neceſſity to go in to his Houſe, as there was another Publick-Houſe within a Gun-ſhot of his Door.

As to what *Euen Murray* and *Colin Maclaren* deponed, in regard to my telling them, that I had given a Challenge to *Glenure*, I own, I was wrong in telling them that Story, as it was a Thing they had no Concern in.

And as to what *Colin Maclaren* deponed, I ſhould have ſaid upon the Road, after parting with

with *Euen Murray*: I ſolemnly declare, I do not remember one Word that paſt, being much the worſe of Liquor, as he himſelf owned upon Oath.

I do declare, that I frankly forgive all theſe Evidences and Jury, as freely as I want Forgiveneſs of my Sins, and do from my Heart pray, that God may pardon them, and bring them to a timeous Repentance, and that they may not be charged with my innocent Blood, as I never intended any of them the leaſt Harm.

My deareſt Friends and Relations, I earneſtly recommend and intreat you, for God's Sake, that you bear no Grudge, Hatred or Malice to thoſe People, both Evidence and Jury, who have been the Means of this my fatal End; rather pity them, and pray for them, as they have my Blood to anſwer for. And tho' you hear my Proſecutors load my Character with the greateſt Calumny, bear it patiently, and ſatisfy yourſelves with your own Conviction of my Innocence. And may this, my hard Fate, put an End to all Diſcords among you, and may you all be united by brotherly Love and Charity. And may the great God protect you all, and guide you in the Ways of Peace and Concord, and grant us a joyful Meeting at the great Day of Judgment.

I remember Mr. *Alexander Campbell* Miniſter at *Inverary*, for whom I have a great Value for his kind and good Advices, told me, that the Fear of diſcovering any of my Friends might be a Temptation to me from making any Confeſſion of my Knowledge of that Murder.

Therefore, to do my Friends Juſtice, ſo far as I know, do declare, that none of my Friends, to my Knowledge, ever did plot or concert that Murder, and I am perſuaded they never employed any Perſon to accompliſh that cowardly Action, and I firmly believe, there is none of my Friends who might have a Quarrel with that Gentleman, but had the Honour and Reſolution to offer him a fairer Chance for his Life, than to ſhoot him privately from a Buſh.

Mr. *Brown* of *Colſton*, Mr. *Millar*, Mr. *Stewart* younger of *Stewarthall*, and Mr. *Macintoſh*, were my Council, and Mr. *Stewart* of *Edinglaſſie*, my Agent. I do declare, that I am fully ſatisfied they did me Juſtice, and that no Part of my Misfortune was owing to their Neglect, or want of Abilities. And as they are Men of known Honour, I hope they will do Juſtice to my Behaviour during the Trial.

I give it as my real Opinion, that if *Allan-Breck Stewart* was the Murderer of *Glenure*, that he conſulted none of his Friends about it.

I conclude with my ſolemn Declaration, that I tamely ſubmit to this my Lot, and ſevere Sentence, and that I freely reſign my Life to the Will of God, that gave me my firſt Breath, and do firmly believe, that the Almighty God, who can do nothing without a good Deſign, brought this Caſt of Providence in my Way for my ſpiritual Good.

I die an unworthy Member of the Epiſcopal Church of *Scotland*, as eſtabliſhed before the Revolution, in full Charity with all Mortals, ſincerely praying, God may bleſs all my Friends and Relations, ~~Benefactors and Well-wiſhers, particularly my~~ poor Wife and Children, who in a ſpecial Manner I recommend to his divine Care and Protection; and may the ſame God pardon and forgive all that ever did or wiſhed me Evil, as I do from my Heart forgive them. I die in full Hopes of Mercy, not through any Merit in myſelf, as I freely own, I merit no Good at the Hand of my offended God, but my Hope is through the Blood, Merits, and Mediation of the ever bleſſed Jeſus, my Redeemer and glorious Advocate, to whom I recommend my Spirit. Come Lord Jeſus, come quickly.

JAMES STEWART.

Mr. *Coupar* Miniſter, ſhowed me ſome Queries a few Days ago, which he was deſired to put to me. They are all anſwered already in my Speech, excepting two, which are: Whether I knew *Allan Breck*'s Rout from *Ballacheliſh* to *Keliſnacone*, and from thence to *Rannoch*, before the Murder happened? *Anſwer*, I declare before God, I did not. Whether I interceeded with *James Drummond*, in the Tolbooth of *Edinburgh*, to perſuade or intice his Brother *Robert*, who was already outlaw'd, to murder *Glenure*, and that I would give him a good Gun for that Purpoſe, and Money for carrying him off the Country, and that *Ardſheall*'s Intereſt would procure him a Commiſſion in *France*? *Anſwer*, I declare before God, there never paſt ſuch Words betwixt *James-More Drummond* and me, or any Propoſals to that Effect.

JAMES STEWART.